

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

<b>United States District Court</b>	District	Eastern District of North Carolina (Western)
Name ( <i>under which you were convicted</i> ): Cruz Eduardo Valencia-ADATA		Docket or Case No.: 5:08-cr-00075-FL-1
Place of Confinement: FCI Oakdale II		Prisoner No.: 51077-056
UNITED STATES OF AMERICA  V.		Movant ( <i>include name under which convicted</i> )  CRUZ EDUARDO VALENCIA-ADATA

**FILED**

1. (a) Name and location of court which entered the judgment of conviction you are challenging: *APR 10 2023*  
 U.S. District Court

Eastern District of North Carolina  
 Western Division

PETER A. MOORE, JR., CLERK  
 US DISTRICT COURT, EDNC  
 BY *(Signature)* DEP CLK

- (b) Criminal docket or case number (if you know): 5:08-cr-00075-FL-1
2. (a) Date of the judgment of conviction (if you know): 5/12/2009  
 (b) Date of sentencing: 5/12/2009
3. Length of sentence: 292 months
4. Nature of crime (all counts):

Ct 1ss: Conspiracy to Distribute and Possess with Intent to Distribute 5 Kilograms or More of Cocaine, in violation of 21 U.S.C. §§ 841 (a)(1) and 846.

Ct 2ss: Possession of a Firearm by an Illegal Alien, in violation of 18 U.S.C. §§ 922(g)(5) and 924.

Ct 3ss: Conspiracy to Launder Monetary Instruments, in violation of 18 U.S.C. § 1956(h).

5. (a) What was your plea? (Check one)  
 (1) Not guilty  (2) Guilty  (3) Nolo contendere (no contest)
- (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?  
 Guilty on Counts 1ss-3ss of the Second Superseding Indictment.
6. If you went to trial, what kind of trial did you have? (Check one) Jury  Judge only
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes  No
8. Did you appeal from the judgment of conviction? Yes  No

9. If you did appeal, answer the following:

- (a) Name of court: \_\_\_\_\_
- (b) Docket or case number (if you know): \_\_\_\_\_
- (c) Result: \_\_\_\_\_
- (d) Date of result (if you know): \_\_\_\_\_
- (e) Citation to the case (if you know): \_\_\_\_\_
- (f) Grounds raised: \_\_\_\_\_

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes  No
- If "Yes," answer the following:
- (1) Docket or case number (if you know): \_\_\_\_\_
- (2) Result: \_\_\_\_\_
- (3) Date of result (if you know): \_\_\_\_\_
- (4) Citation to the case (if you know): \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: Eastern District of North Carolina (Western Division) \_\_\_\_\_  
(2) Docket or case number (if you know): 5:22-CV-466-F \_\_\_\_\_  
(3) Date of filing (if you know): 10/22/2019 \_\_\_\_\_
- (4) Nature of the proceeding: Section 2255 \_\_\_\_\_  
(5) Grounds raised: \_\_\_\_\_

Valencia-Adato claims he is entitled to relief because he is actually innocent of the firearm conviction. Relying on *Rehaif v. United States*, 139 S. Ct. 2191 (2019), Valencia-Adato contends the Government failed to prove that he fell into one of the categories of persons prohibited from possessing a firearm.

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: Terminated

(8) Date of result (if you know): 9/15/2021

(b) If you filed any second motion, petition, or application, give the same information:

- (1) Name of court: \_\_\_\_\_
- (2) Docket of case number (if you know): \_\_\_\_\_
- (3) Date of filing (if you know): \_\_\_\_\_
- (4) Nature of the proceeding: \_\_\_\_\_
- (5) Grounds raised: \_\_\_\_\_

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes  No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

- (1) First petition: Yes  No
- (2) Second petition: Yes  No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** Valencia-Adato never gave his consent to voluntarily withdraw his motion.

## (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Valencia-Adato never gave his consent to voluntarily withdraw his motion. As such, this Court never ruled on the merits of his § 2255 Motion, but instead, the Court dismissed Valencia-Adato's § 2255 Motion when it granted the FPD's Notice of Withdrawal of Motion to Vacate. Thus, Valencia-Adato moves this Court to Reopen his § 2255 Motion to rule on the merits.

Please see Doc. 143.

(b) **Direct Appeal of Ground One:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

- (2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

- (2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

- (3) Did you receive a hearing on your motion, petition, or application?

Yes  No

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):  
\_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:  
\_\_\_\_\_

**GROUND TWO:** \_\_\_\_\_

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
\_\_\_\_\_

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(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:  
\_\_\_\_\_

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(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

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**GROUND THREE:** \_\_\_\_\_

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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**(b) Direct Appeal of Ground Three:**

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

- (2) If you did not raise this issue in your direct appeal, explain why:

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**(c) Post-Conviction Proceedings:**

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

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- (3) Did you receive a hearing on your motion, petition, or application?

Yes  No

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

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- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):

- (7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:
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**GROUND FOUR:**

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- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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(b) Direct Appeal of Ground Four:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

- (2) If you did not raise this issue in your direct appeal, explain why:

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(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes  No

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes  No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes  No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes  No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

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Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

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13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

N/A

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14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

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15. Give the name and address, if known, of each attorney who represented you in the following stages of the case you are challenging:

(a) At the preliminary hearing:

James Ashley Pearce, P.O. Box 1575, Raleigh, NC 27602

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(b) At the arraignment and plea:

David Bruce Freedman, Crumpler Freedman Parker & Witt, 860 West 5th Street, Winston-Salem, NC 27106

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(c) At the trial:

N/A

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(d) At sentencing:

David Bruce Freedman, Crumpler Freedman Parker & Witt, 860 West 5th Street, Winston-Salem, NC 27106

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(e) On appeal:

N/A

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(f) In any post-conviction proceeding:

N/A

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(g) On appeal from any ruling against you in a post-conviction proceeding:

N/A

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16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes  No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

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(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes  No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

N/A

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\* The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

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or any other relief to which movant may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_.  
(month, date, year)

Executed (signed) on \_\_\_\_\_ (date)

\_\_\_\_\_  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Therefore, Valencia-Adata respectfully requests that the Court grant the following relief:

Vacate his conviction and sentence to start anew; alternatively, grant an Evidentiary hearing to further prove his grounds set forth above, resolve facts in dispute, expand an incomplete record or any other relief to which this Court deems that he may be entitled.

Respectfully submitted,

Cruz Valencia  
CRUZ EDUARDO VALENCIA-ADATA  
REG. NO. 51077-056  
FCI OAKDALE II  
FEDERAL CORR. INSTITUTION  
P.O. BOX 5010  
OAKDALE, LA 71463  
Appearing *Pro Se*

**DECLARATION OF CRUZ EDUARDO VALENCIA-ADATA**

I, Cruz Eduardo Valencia-Adata, declarant herein, declare and attest to the facts in the above and foregoing Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody to be true and correct to the best of my knowledge under the penalty of perjury pursuant to 28 U.S.C. § 1746. I placed this § 2255 Motion in the prison mailbox on the date below invoking the prison mailbox rule. See *Houston v. Lack*, 487 U.S. 266, 270 (1988).

Dated: April 5, 2023

Cruz Valencia  
CRUZ EDUARDO VALENCIA-ADATA